

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
May 6, 2009 Session

**RACHEL (DIXON) LEE, BY HER MOTHER AND NEXT FRIEND, REBECCA  
LEE v. TENNESSEE DEPARTMENT OF FINANCE AND  
ADMINISTRATION, ET AL.**

**Appeal from the Chancery Court for Davidson County  
No. 07-1812-III Ellen Hobbs Lyle, Chancellor**

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**No. M2008-02029-COA-R3-CV - Filed July 24, 2009**

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Appellant sought review of the Bureau of TennCare's denial of her request for orthodontic services. An administrative judge ("AJ") issued an initial order upholding the denial. Appellant filed a Motion for Reconsideration of the initial order with the AJ, which was denied. The initial order became final and Appellant filed a petition for judicial review with the chancery court. The court dismissed the petition as untimely, finding that it was not filed within sixty days of entry of the agency's final order. Appellant challenges the trial court's determination of the date at which the order became final. Finding that Appellant's petition was timely filed, the judgment is reversed and the case remanded for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed and  
Remanded**

RICHARD H. DINKINS, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S. and FRANK G. CLEMENT, JR., J. joined.

David Kozlowski, Columbia, Tennessee, for the appellant Rachel (Dixon) Lee.

Robert E. Cooper, Attorney and General Reporter, Shayna Abrams, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Finance and Administration.

**OPINION**

**I. Factual and Procedural History**

In 2005, Rachel Dixon ("Appellant") was a minor child in the custody of the Tennessee Department of Children's Services ("DCS") and was enrolled in TennCare. While in DCS' custody, Appellant was seen by an orthodontic specialist who recommended that she receive braces. A request was made for approval of the orthodontic services to Doral Dental, TennCare's managed care

organization for dental services; Doral Dental denied the request on December 30, 2005. On January 26, 2006, Appellant appealed the denial to the Bureau of TennCare (“TennCare”); the denial was upheld by letter of February 17. The February 17 letter also advised Appellant of a right to a hearing on her appeal to be held by an administrative judge (“AJ”). On January 20, 2007, a hearing was held to review the denial of the request for approval of orthodontic services.<sup>1</sup> On April 24, 2007 the AJ issued an Initial Order, upholding TennCare’s decision. Appellant filed a Motion for Reconsideration of the Initial Order on May 9, which the AJ denied on May 30.

On August 13, 2007, Appellant filed a complaint in the Chancery Court for Davidson County, seeking judicial review of the denial of her request for approval of orthodontic services.<sup>2</sup> The Tennessee Department of Finance and Administration (“Appellee”) subsequently filed a Motion to Dismiss, contending that the trial court lacked subject matter jurisdiction since the appeal was untimely filed.

Following a hearing, the trial court granted the motion to dismiss, finding that Appellant did not file her petition for judicial review within 60 days of entry of the agency’s final order and, thus, the proceeding was untimely.

On appeal, Appellant raises the following issue:

1. Whether the Chancery Court erred when holding, as a matter of law, that the Final Order of the Bureau of TennCare was entered on May 9, 2007, thereby making Appellant’s request for judicial review untimely.

## II. Analysis

Both parties agree that this matter is governed by the Uniform Administrative Procedures Act (“APA”).<sup>3</sup> Construction of a statute is a question of law which appellate courts review *de novo*, without a presumption of correctness of the trial court’s findings. *Barge v. Sadler*, 70 S.W.3d 683, 686 (Tenn. 2002); *Hill v. City of Germantown*, 31 S.W.3d 234, 237 (Tenn. 2000); *Gleaves v. Checker Cab Transit Corp., Inc.*, 15 S.W.3d 799, 802 (Tenn. 2000); *Exxonmobil Oil Corp. v. Metro Gov’t. of Nashville and Davidson County*, 246 S.W.3d 31, 35 (Tenn. Ct. App. 2005).

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<sup>1</sup> It appears from the record that hearings were set for April 17, May 25, July 27, August 22, September 21 and December 19, 2006, but were each continued.

<sup>2</sup> Appellant was adopted by Rebecca Lee and her husband in May of 2006; after adoption, she changed her name from Rachel Dixon to Rachel Lee. Suit was brought by Rebecca Lee, as Mother and Next Friend of Rachel Lee.

<sup>3</sup> Tenn. Code Ann. § 4-5-101, *et. seq.*

In its order dismissing the case, the trial court determined that, pursuant to Tenn. Code Ann. § 4-5-318(f)(3),<sup>4</sup> the Initial Order of April 24, 2007, became final on May 9, 2007 and, consequently, the last day for filing the petition for judicial review was July 9, 2007. Appellant asserts that the trial court's application of § 4-5-318(f)(3) "misinterprets the relatively intricate dual appeal process that has been established by the APA and, in large measure, eliminates Tenn. Code Ann. § 4-5-315(b) from the equation" and that "an initial order is not transformed into a final order until the appellate process offered is either exhausted or waived by inaction." Thus, she contends that the AJ's Initial Order became final 15 days after her Motion for Reconsideration was denied - at which point her option to file a petition for reconsideration had been exhausted and her option to file a petition for appeal to the agency, as well as the agency's option to review the initial order, had been waived. Since her Motion for Reconsideration was denied on May 30, the Initial Order became final on June 14, and she had until August 13 to file her petition for judicial review.

Appellee contends that "[t]he statute specifying when an initial order becomes a final order [Tenn. Code Ann. § 4-5-318(f)] does not reference motions for reconsideration and specifically mentions only petitions for appeal to the agency" and contends that "[i]f a petitioner does not request review by the agency, then the initial order becomes final fifteen (15) days after the entry of the initial order by operation of statute." Appellee asserts that only the *granting* of a petition for reconsideration can toll the sixty-day time period within which to file a petition for judicial review with the chancery court and that the *filing* of a petition for reconsideration only affords an additional 15 days to "petitioners who *also* file an appeal to the agency." (Emphasis added). Thus, Appellee argues that the AJ's Initial Order became final 15 days after it was originally issued - since the Motion for Reconsideration was denied and Appellant did not file a petition for appeal; as such, 15 days from the April 24 entry of the Initial Order was May 9, which means that Appellant would have had to file her petition for judicial review with the chancery court by July 9.

The determinative issue in this appeal is when the Initial Order became final, thereby triggering the sixty-day time period within which Appellant was required to file her appeal.<sup>5</sup> Construing the statute as a whole, we find that an initial order does not become a final order for

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<sup>4</sup> Tenn. Code Ann. § 4-5-318 states, in part pertinent, that:

(f) Unless a later date is stated in an initial order or a stay is granted, the time when an initial order becomes a final order in accordance with § 4-5-314 shall be as follows:

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(3) Fifteen (15) days after entry of the initial order, if no party has filed a petition for appeal and the agency has not given written notice of its intention to exercise review.

Tenn. Code Ann. § 4-5-318(f).

<sup>5</sup> "A person who is aggrieved by a final decision in a contested case is entitled to judicial review under [the APA], which shall be the only available method of judicial review." Tenn. Code Ann. § 4-5-322(a)(1). "Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County" and "[s]uch petition shall be filed within sixty (60) days after the entry of the agency's *final* order thereon." Tenn. Code Ann. § 4-5-322(b)(1)(A) (emphasis added).

purposes of chancery court review until fifteen days after the AJ has disposed of a petition for reconsideration, the agency has disposed of a petition for appeal or an agency review of the initial order. Consequently, Appellant's petition for review was timely filed.

Contested cases follow one of two procedures under the APA in order to reach a decision and issue a final order. *Davis v. Tennessee Dept. of Employment Sec.*, 23 S.W.3d 304, 308 (Tenn. Ct. App. 1999). The hearing of a contested case is conducted either "(1) [i]n the presence of the requisite number of members of the agency...and in the presence of an [AJ]...; or (2) [b]y an [AJ]...sitting alone." Tenn. Code Ann. § 4-5-301(a). If the case is heard by members of an agency, then that panel renders a final order. Tenn. Code Ann. § 4-5-314(a). "If an [AJ]...hears a case alone..., the [AJ]...shall render an initial order," Tenn. Code Ann. § 4-5-314(b); this is the statute under which this case proceeded.

Tenn. Code Ann. § 4-5-318(f)(3) provides that an initial order "become[s] a final order in accordance with § 4-5-314. . . [f]ifteen (15) days after entry of the initial order, if no party has filed a petition for appeal and the agency has not given written notice of its intention to exercise review." Tenn. Code Ann. § 4-5-315, entitled "Review of initial order", however, states in part pertinent:

The fifteen-day period for a party to file a petition for appeal or for the agency to give notice of its intention to review an initial order on the agency's own motion shall be tolled by the submission of a timely petition for reconsideration of the initial order pursuant to § 4-5-317, and a new fifteen-day period shall start to run upon disposition of the petition for reconsideration.

Tenn. Code Ann. § 4-5-315(b). Tenn. Code Ann. § 4-5-317(a), in turn, provides that "[a]ny party, within fifteen (15) days after entry of an initial order or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested."

This Court is to presume that the General Assembly selected the language of the APA deliberately, *Tenn. Manufactured Housing Ass'n. v. Metro. Gov't.*, 798 S.W.2d 254, 257 (Tenn. Ct. App. 1990), and that the words used convey some intent and carry meaning and purpose. *Tennessee Growers, Inc. v. King*, 682 S.W.2d 203, 205 (Tenn. 1984); *Clark v. Crow*, 37 S.W.3d 919, 922 (Tenn. Ct. App. 2000). Further, our responsibility is to "seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning." *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001) (citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995)).

The language used in Tenn. Code Ann. § 4-5-315(b) to describe the fifteen-day time period which is tolled by the filing of a petition for reconsideration is the same language which is used in Tenn. Code Ann. § 4-5-318(f) to describe the fifteen-day time period during which an initial order becomes final. Furthermore, Tenn. Code Ann. § 4-5-315(b) refers to the "fifteen-day period" provided to a party after an AJ disposes of a petition for reconsideration as "new," suggesting that an "old" time frame existed and was being replaced. We conclude, therefore, that the General

Assembly's intent was for the fifteen-day time period during which an initial order becomes final, Tenn. Code Ann. § 4-5-318(f), to be the same fifteen-day time period which is tolled by the filing of a petition for reconsideration and which is replaced by a "new fifteen-day period...upon disposition of the petition." Tenn. Code Ann. § 4-5-315(b). Consequently, when a petition for reconsideration is filed and disposed of by the AJ, a "new fifteen-day period" for the AJ's disposition to become final begins. To hold otherwise would make the filing of a petition for reconsideration meaningless, since the initial order would become final while the petition for reconsideration was pending; also, there would be no vehicle for appeal to the agency or for agency review of the AJ's order, as reconsidered. This would be contrary to the purpose and intent of the statute to provide a comprehensive administrative review prior to recourse to chancery court.<sup>6</sup>

In further support of this construction of the statute, a copy of the Initial Order sent to Appellant contained an Appendix titled "Notice of Appeal Procedures," which stated that:

This Initial Order shall become a Final Order...fifteen (15) days after the entry date of this Initial Order, unless *either or both* of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order...

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order.

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A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction...within sixty (60) days after the entry date of a Final Order...

(Emphasis added). The Appendix clearly states that the Initial Order would not become final 15 days after its entry if *either* a petition for appeal with the agency or a petition for reconsideration is filed. Thus, the motion for reconsideration prevented the Initial Order from becoming final in accordance with the language of the Appendix.<sup>7</sup>

Appellee contends that the tolling provision and the "new fifteen-day period" set forth in Tenn. Code Ann. § 4-5-315(b) are only applicable to those petitioners who actually file a petition for appeal to the agency. However, such an interpretation would be contrary to the express language

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<sup>6</sup> "Where different sections [of an Act] are apparently in conflict [this Court] must harmonize them, if practicable, and lean in favor of a construction which will render every word operative." *Bible & Godwin Constr. Co. v. Faener Corp.*, 504 S.W.2d 370, 371 (Tenn. 1974)).

<sup>7</sup> This is consistent with an application of Tenn. Code Ann. § 4-5-318(f)(3), which provides that an initial order becomes final 15 days after it is entered "[u]nless a later date is stated in an initial order or a stay is granted."

of the statute. The filing of a petition for appeal to the agency is not necessary to trigger the provisions of Tenn. Code Ann. § 4-5-315(b).

Lastly, Appellee contends that, pursuant to Tenn. Code Ann. § 4-5-317(e),<sup>8</sup> only the grant of a petition for reconsideration can toll the sixty-day time period within which a party is required to file a petition for judicial review with the chancery court. This statute, however, addresses an order which has become final, rather than an initial order and does not support Appellee's contention that Appellant's time for filing her petition for review ran on July 9. The issue in this case is when the initial order became final, at which point the sixty-day time period would start to run, and not the tolling of the sixty-day time period where reconsideration is sought of the final order.

Consequently, we find that the AJ's Initial Order became final on June 14, 2007, 15 days after the Motion for Reconsideration was denied, and that Appellant's filing of her petition with the chancery court on August 13, 2007, was within the sixty-day time period for seeking judicial review of a final agency order. Thus, the trial court's dismissal of Appellant's petition for judicial review for lack of subject matter jurisdiction was error.

## **V. Conclusion**

For the reasons set forth above, the decision of the Circuit Court is REVERSED and REMANDED for proceedings consistent with this opinion. Costs are assessed against Appellee, for which execution may issue if necessary.

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RICHARD H. DINKINS, JUDGE

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<sup>8</sup> "The sixty-day period for a party to file a petition for review of a final order shall be tolled by granting the petition [for reconsideration] and setting the matter for further proceedings." Tenn. Code Ann. § 4-5-317(e).